

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

Filed: 5/15/98
49th Day: 7/3/98
180th Day: 11/11/98
Staff: Padilla-LB
Staff Report: 5/18/98
Hearing Date: 10/14/98
Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 5-98-164

APPLICANT: Playa Capital Company, LLC

AGENT: Psomas & Associates

PROJECT LOCATION: 13250 Jefferson Boulevard, Playa Vista, City of Los Angeles

PROJECT DESCRIPTION: Archaeological inventory and evaluation of five separate sites. The investigation will involve mechanical and manual excavations for minor coring, trenching, and backfilling to restore sites.

LOCAL APPROVALS RECEIVED: Approval In Concept #98-039

SUBSTANTIVE FILE DOCUMENTS:

1. Playa Vista certified LUP, City of Los Angeles
2. CDP #5-91-463 (Maguire Thomas Partners-Playa Vista)
3. Agreement for Settlement of Litigation in the 1984 case of Friends of Ballona Wetlands, et al. v. The California Coastal Commission, et al., Case No. C525-826.
4. Programmatic Agreement Among the U.S. Army Corps of Engineers, Los Angeles District, the Advisory Council on Historic Preservation, and the California State Historic Preservation Officer, regarding implementation of the Playa Vista Project, 1991.
5. Dept. of Fish and Game memorandum (12/20/91) regarding Wetlands Acreage Determination

EXHIBITS

1. Vicinity Map/Playa Vista Planning Area
2. Site Locations for the Five Archaeological Sites
3. Playa Vista Land Use Plan Wetland Delineation map
4. U.S. Army Corps Wetland Delineation map.

5. Freshwater Marsh and U.S. Army Corps Wetland location.
6. Dept. of Fish and Game Memorandum (12/20/91) regarding Wetlands Acreage Determination from CDP#5-91-463.

SUMMARY OF STAFF RECOMMENDATION:

Staff recommends approval with special conditions regarding the curation of cultural resources, Native American monitoring, review of Treatment Plan (mitigation plan), and submittal of a staging and storage plan for construction equipment to ensure that all construction activity remains outside of any delineated wetlands.

Staff Note: In August of this year the Commission discussed the proposed development of an unpaved construction access road by the applicant (permit application #5-91-463A3). The road did not involve any activity on the jurisdictional wetlands within the Ballona Wetlands; however, the road would have enabled the applicant to complete the construction of the fresh water marsh. As noted above construction of the fresh water marsh does include fill of eight acres of the Corps' jurisdictional wetlands. The Commission continued the August hearing for further analysis of how its approval of the permit for the road could possibly prejudice the Corps ability to consider alternatives in the Corps preparation of a future EIS and the Commission's approval of the freshwater marsh.

In this particular case, the approval of the proposed project will not prejudice the ability of the Corps to prepare an EIS and analyze alternatives. As stated, the proposed project is outside any of the jurisdictional wetlands as well as outside the area of the approved freshwater marsh. Furthermore, in preparation of an EIS and analysis of alternatives the Corps has stated that to fully analyze alternatives archaeological investigations of known potential archaeological sites need to be conducted so that impacts to archaeological resources could be fully addressed. Without such archaeological information the extent and significance of each site could not be known and the impact to each site could not be properly evaluated. Therefore, the proposed project would assist rather than prejudice the Corps' ability to analyze alternatives as part of the EIS process.

In addition, the Commission's action on the proposed coastal development permit will not prejudice the Corps' ability to prepare an EIS because in acting on the proposed development, the Commission is solely determining whether the proposed development is consistent with Chapter 3. The Commission's determination of Chapter 3 consistency is not tantamount to a decision that development shall be constructed. It is the developer's election to pursue construction of development and it is the developer who bears the burden of any risk associated with that decision. Finally, the Commission finds that the judge's order invalidating the Corps' 404 approval does not invalidate the CDP for the fresh water marsh. Given that the Commission has already approved the permit for the freshwater marsh, any constraints which exist on the ability of the developer to proceed with the freshwater marsh are not Coastal Act concerns.

The staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions.

The Commission hereby grants a permit, subject to the conditions below, for the proposed development on the grounds that the development will be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act, and will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions.

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.
4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions:

1. Curation Facility

Prior to issuance of the permit the applicant shall agree in writing, subject to the review and approval of the Executive Director, to the following:

a) Artifacts collected as a result of this project shall be curated at a qualified curation facility, such as the San Bernadino County Museum. A qualified curation facility is one that meets the State Office of Historic Preservation Guidelines for Curation of Archaeological Collections.

b) Prior to completion of archaeological work at the site the applicant shall submit, for the review and approval of the Executive Director, evidence that:

i) the curation facility meets the State Office of Historic Preservation Guidelines for Curation of Archaeological Collections; and

ii) evidence of the facility's willingness to accept the collection.

c) If no qualified curation facility is available at the time the project is complete, an amendment to this permit shall be required to determine the appropriate curation process.

2. Native American Monitor

A Native American monitor shall be present on-site during all excavation activities to monitor the work. The monitors shall meet the requirements set forth in the Native American Heritage Commission Guidelines for Monitors/Consultants of Native American Cultural, Religious, and Burial Sites.

3. Review of Treatment Plan

In the event that cultural resources are discovered and a Treatment Plan (mitigation plan) is prepared the Treatment Plan shall be submitted to the Executive Director for review and approval. Based on the mitigation procedures outlined in the Treatment Plan the Executive Director will determine if an amendment to this permit is required.

4. Construction Activities and Avoidance of Wetland Areas

Prior to the issuance of the permit the applicant shall submit, for review and approval by the Executive Director, evidence that all staging and storage of construction materials for the proposed archaeological development will be outside of any viable and/or restorable wetland areas as delineated by the Department of Fish and Game in 1992, as well as any areas which meet any one of the three wetland parameters listed below:

(1) at least periodically, the land supports predominately hydrophytes; (2) the substrate is predominantly undrained hydric soil; and (3) the substrate is nonsoil and is saturated with water or covered by shallow water at some time during the growing season of each year.

IV. Findings and Declarations.

A. Project Description

The applicant proposes archaeological inventory and evaluation of five separate possible archaeological sites (SR8, SR9, SR10, SR11, and LAN-54). See Exhibit #1 and 2. The objective of the proposed project is to evaluate the potential archaeological value of the five sites. The investigation will involve mechanical and manual excavations as well as backfilling to restore sites to their natural topography.

The five sites are located in the Playa Vista planning area of the City of Los Angeles. The five sites are outside of any wetland areas as determined by the Commission in 1984 and 1992 (see Exhibit #3). The five sites are located, and described by the applicant's archaeologist, as follows:

SR8-- Lincoln Boulevard marks the eastern boundary and truncates part of the site. Jefferson Boulevard is located approximately 50 m (164 feet) to the south and the existing channel of Ballona Creek is approximately 60 m (197 feet) to the north. The site consists of a very sparse shell scatter extending over an area of 115 by 90 m (377 by 295 ft.).

SR9- the site is located near the intersection of Jefferson and Culver Boulevards. Jefferson Boulevard is located approximately 15 m (49 feet) to the south, and the channel of Ballona Creek is approximately 200 m (656 feet) to the north. The site consists of a very sparse shell scatter extending over an area of 90 by 55 m (295 by 180 ft.).

SR10- located a short distance west of SR8. The existing channel of Ballona Creek marks the north boundary. Culver Boulevard is about 45 m (147 ft) to the south, just south of a large deposit of modern trash and a linear berm. Lincoln Boulevard and the historical location of the edge of the Ballona lagoon are about 400 to 500 m (1,312 to

1,640 ft.) to the east. The site consists of a light shell scatter that encompasses an area of about 150 by 60 m (492 by 197 ft.).

SR11- Located adjacent to and east of the loop connecting Culver Boulevard to the northbound lane of Lincoln Boulevard. The site is approximately 60 m (200 feet) north of the existing channel of Ballona Creek. Located along the extreme eastern edge of the historical period location of the Ballona Lagoon but outside of the current extent of the designated wetlands. The site consists of a sparse shell scatter encompassing an area of about 30 by 12 m (98 by 39 ft.).

LAN-54- located south of the intersection of Culver Boulevard and the Marina (90) Freeway. Located on a low hill overlooking the north bank of Ballona Creek and the northeastern edge of the historical period lagoon.

To determine the extent of the surface artifact scatter, a series of shovel probes will be used. Shovel probes are small units approximately 19.5 inches (50 cm) by 19.5 inches (50 cm) in size, and are manually excavated. Excavations with the shovel probes will not exceed approximately 3 feet (1 m) in depth.

Mechanical coring or hand auguring will be used to determine whether any buried archaeological deposits exist at depths greater than 3 feet (1 m). Cores, approximately 2-3 inches in diameter, and will be excavated to a maximum depth of 25 feet.

Depending on the results of the surface collections and shovel probes and cores, one or more backhoe trenches, bucket augers, and/or test pits may be required to determine the nature and integrity of the deposit. Test pits will vary in dimension from 3 feet (1 m) by 3 (1 m) to 6 feet (2 m) by 6 feet (2 m). Backhoe trenches will generally be about 65 feet (20 m) in length. Bucket augers will be 2 or 3 feet in diameter; augers will be excavated in 1 foot sections, and be excavated to a maximum depth of 25 feet.

If any of the sites are determined to be contributing elements of the National Register of Historic Places-eligible Ballona Lagoon Archaeological District, and avoidance is not an option for mitigation of impacts, more extensive excavations beyond the evaluation phase excavations will be required. Once the excavation is completed, additional analysis of the artifacts, a report detailing the results of the excavations, and curation of the artifacts and other project materials completes the data recovery process.

Any additional work outside the scope of this project, as described in the project description, will require review by the Executive Director to determine if an amendment or a new permit is required.

B Relationship of Proposed Project to Ballona Litigation

1. Background

The existing Ballona Wetlands are remnants of a much larger wetland system that formerly covered approximately 1,750 acres. However, a change in course of the Los Angeles River, construction of the Ballona Flood Control Channel in 1932, and dredging of the Marina del Rey Small Craft Harbor in the 1960's drastically reduced the size of the marsh to its present state. Urban development in this region also contributed to the significant reduction in the quantity and quality of the Ballona Wetlands. Most of the remaining Ballona Wetlands are no longer in their natural condition having been altered by oil drilling, pipelines, construction of roads, conversion to farm lands, and dredged material disposal.

Through the California Coastal Act's Local Coastal Program (LCP) process, Los Angeles County developed a Land Use Plan (LUP) for the Ballona Wetlands. The plan divided the area into four subareas, Areas A, B, C, and D (Area D is outside of the coastal zone). In 1984, the Commission certified the LUP with suggested modifications that were eventually accepted by the County. Several years after the completion of the LUP, the City of Los Angeles annexed parts of the County's LCP area, encompassing Areas B and C, into the City. The City developed an LUP, similar to the County's LUP, and in 1986 the Commission certified the LUP with suggested modifications, which were accepted by the City.

The City's LUP identified the appropriate land uses for the areas within its jurisdictions. The planning for the 385-acre Area B would allow for a minimum 209 acre habitat Management Area, including 175 acres of restored wetlands, buffers and ecological support areas, a public interpretive center; up to 2,333 dwelling units, up to 70,000 square feet of "convenience commercial", and private recreation opens space to serve new residents. For Area C the plan would allow for up to 2,032 dwelling units, 50,000 square feet of convenience commercial (retail and office), 900,000 square feet of office, and 100,000 square feet of retail.

In response to the certification of the County of Los Angeles', and later the City of Los Angeles', LUP, the Friends of Ballona Wetlands, and several other groups, filed a law suit challenging the certification of the coastal land use plan, Friends of Ballona Wetlands, et al v. California Coastal Commission, et al. (Superior Court of the State of California, County of Los Angeles, Case No. 525-826).

In 1989, Maguire Thomas Partners-Playa Vista (MTP-PV) acquired management control of Playa Vista and worked with the parties involved in the lawsuit to resolve the issues raised by the litigation. Subsequently, Maguire Thomas Partners entered into a Settlement Agreement with the Friends of Ballona Wetlands, the City, the County and the Commission. Under the Settlement Agreement MTP-PV agreed to eliminate residential development on wetlands in Area B, to downscale commercial development substantially, and to eliminate residential development on an eight acre parcel on the southwest border of the salt marsh. These changes would reduce the amount of residential development in Area B from 2,333 dwelling units allowed by the LUP to 1,800 units, and would reduce the amount of commercial development in Area B from 70,000 square feet of "convenience commercial" allowed in the LUP to 20,000 square feet. Under these changes, all such development in Area B would be restricted to the area north of Jefferson Boulevard.

By entering into the settlement, the Commission did not end the litigation or approve the revised development and restoration plans. Instead, the settlement provides a means for full discretionary review with public input of the revised plans by the City, the County and the Commission. The revised plans are still evolving. The settlement was designed to put into effect a process for governmental review of the current proposal for development of Playa Vista and the restoration of the Ballona Wetlands that, if approved, will become the Land Use Plan and LCP for the Playa Vista Area.

In 1991 the Commission approved a permit for a 26.1 acre freshwater marsh restoration project in Area B [CDP #5-91-463 (Maguire Thomas Partners-Playa Vista)]. That permit is the first element in the overall wetlands restoration program. Other aspects of the Ballona Wetlands restoration will be brought before the Commission when Commission permitting is required.

In the coastal zone the freshwater marsh restoration included fill of approximately 8 of 16 acres of jurisdictional wetlands (Jurisdictional wetlands are wetlands defined by the Corps). The placement of fill within jurisdictional wetlands requires a 404 permit from the Corps; dredging within jurisdictional wetlands is not subject to a 404 permit.

MTP-PV applied to the Corps for a permit to fill approximately 16.1 acres of federally delineated wetlands pursuant to the major development project in the Ballona Wetlands area. The approximately 16.1 acres were located in areas B, C, and D and consisted of man-made flood control ditches and wetland patches. MTP-PV divided the Playa Vista property into four quadrants: Areas A, B, C, and D. The Playa Vista project itself is then divided into 3 phases. The First phase involves, in part, the construction of 80,000 square feet of office space and 450 residential units in Areas B, C, and D of the Playa Vista property, which contain 17 isolated patches of degraded wetlands. The second phase involves the restoration of the 230-acre salt marsh system within Area B that has been permitted by the Commission. The third phase involves the development of a marina in Area A and associated commercial and residential space and, possibly, improvements to the Ballona channel.

Prior to issuing the permit, the Corps was required to analyze the environmental effects of each stage's permitted activity, pursuant to NEPA. If the Corps determined that the permitted activity would have a "significant impact" on the environment, an EIS would be required to be prepared before granting a permit. If no significant environmental impacts were found, the Corp would be required to issue a Finding of No Significant Impact (FONSI) and an Environmental Assessment (EA).

The Corps determined that an EIS was not necessary and issued a FONSI and an EA allowing MTP-PV to begin the first phase of filling operations. Later, the Corps required that both the second and third stages of the Playa Vista project be preceded by an EIS. In 1992 the Army Corps of Engineers issued a permit to MTP-PV for the fill of wetlands and drainage ditches that are waters of the U.S. that included areas within the coastal zone and areas outside of the coastal zone.

The Corps permit allowed, in part, for the applicant to construct the freshwater marsh restoration project approved by the Commission in CDP #5-91-463.

In 1996, a lawsuit was filed against the Corps (Wetlands Action Network; Ballona Wetlands Land Trust; and California Public Interest Research Group v. United States Army Corps of Engineers). The lawsuit alleged that the Corps failed to fulfill their legal obligations under the National Environmental Policy Act (NEPA) and the Clean Water Act (CWA) by granting a fill permit to Maguire Thomas Partners-Playa Vista (MTP-PV) under section 404 of the CWA. The federal district court dismissed the Clean Water Act cause of action but granted the plaintiff's motion for summary judgment on the NEPA cause of action.

The court found that the Corps' decision to issue the permit with only an EA and FONSI, and not the more detailed EIS, without certain mitigation documents and success criteria worked out before issuance, given the untested nature of the retention basin, and in the midst of substantial dispute as to the project's nature and effects, was arbitrary, capricious, and otherwise not in accordance with the law. The court, therefore, rescinded the permit, and all construction activities on the jurisdictional wetlands are prohibited until the Corps complies with its NEPA obligations to prepare an EIS on the project's effect on the 16.1 acres of wetlands. The judges' order does not prohibit development outside the jurisdictional wetlands although the EIS must consider effects of such nearby development on the wetlands. The judges' order is on appeal to the Ninth Circuit.

2. Relationship of project to litigation

The five proposed archaeological inventory and evaluation sites are outside of the freshwater marsh restoration project permitted by the Commission and the Corps. Furthermore, the proposed sites do not involve any state or federally designated wetlands, including the approximately 16.1 acres that were subject to the lawsuit filed against Corps and the court order halting all construction activities involved in the approximately 16.1 acres of Corps delineated wetlands (see Exhibits #4 and 5).

In August of this year the Commission discussed the proposed development of an unpaved construction access road by the applicant (permit application #5-91-463A3). The road did not involve any activity on the jurisdictional wetlands within the Ballona Wetlands; however, the road would have enabled the applicant to complete the construction of the fresh water marsh. As noted above construction of the fresh water marsh does include fill of eight acres of the Corps' jurisdictional wetlands. The Commission continued the August hearing for further analysis of how its approval of the permit for the road could possibly prejudice the Corps ability to consider alternatives in the Corps preparation of a future EIS and the Commission's approval of the freshwater marsh..

In this particular case, the approval of the proposed project will not prejudice the ability of the Corps to prepare an EIS and analyze alternatives. As stated, the proposed project is outside any of the jurisdictional wetlands as well as outside the area of the approved freshwater marsh. Furthermore, in preparation of an EIS and analysis of alternatives the Corps has stated that to fully analyze alternatives archaeological investigations of known potential archaeological sites need to be conducted so that impacts to archaeological resources could be fully addressed. Without such archaeological information the extent and significance of each site could not be known and the impact to each site could not be properly evaluated. Therefore, the proposed project would assist rather than prejudice the Corps' ability to analyze alternatives as part of the EIS process.

In addition, the Commission's action on the proposed coastal development permit will not prejudice the Corps' ability to prepare an EIS because in acting on the proposed development, the Commission is solely determining whether the proposed development is consistent with Chapter 3. The Commission's determination of Chapter 3 consistency is not tantamount to a decision that development shall be constructed. It is the developer's election to pursue construction of development and it is the developer who bears the burden of any risk associated with that decision.

Finally, the Commission finds that the judge's order invalidating the Corps' 404 approval does not invalidate the CDP for the fresh water marsh. Given that the Commission has already approved the permit for the freshwater marsh, any constraints which exist on the ability of the developer to proceed with the freshwater marsh are not Coastal Act concerns.

C. Wetland Resources

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface

water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233 states in part:

(a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.

Section 30240(a) of the Coastal Act states:

Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

In certifying the LUP for this area, the Commission adopted the Department of Fish and Game's wetland delineation (The Department of Fish and Game is the agency that the Commission has historically relied upon to delineate wetlands). That delineation stated that there were 37.50 acres of wetlands in Area A, 112 acres of wetlands in Area B, and 2.50 acres of wetlands in Area C.

In 1992, based on a consultant's reassessment of the Department of Fish and Game's original delineation, the Commission found that Area A contained approximately 20 acres of wetlands [CDP#5-91-463 (Maguire Thomas Partners-Playa Vista)]. However, the Commission recognized that the natural conditions were dynamic and that the amount of wetlands could continue to change. Therefore, the Commission conditioned the freshwater marsh restoration permit to require reassessment of the habitat on Area A prior to the release of the mitigation credits for the freshwater marsh.

In June 1992, the applicant came before the Commission for approval of the delineation of the wetlands as required in permit #5-91-463. The delineation submitted by the applicant concluded that a total of 22.49 acres of wetlands within Area A are subject to the jurisdiction of the Coastal Act (see Exhibit 5, Dept. of Fish and Game wetland delineation Memo). The total was 2.5 acres more wetlands in Area A than the Commission assumed in its actions on the permit for the Freshwater Wetland System (In that action, the Commission assumed that Area A contained 20 acres of wetlands, and based the applicant's mitigation and restoration obligation on that assumption). Based on the delineation of an additional 2.5 acres the Commission revised the applicant's mitigation requirements from 39.7 acres to 42.2 acres.

Questions regarding the amount of wetland acreage have centered on Area A. The proposed project is located in Area B where the amount of wetland acreage has not been in dispute. Furthermore, the latest delineation of the wetland acreage evidenced that the five proposed archaeological investigation sites were not identified as wetlands.

In 1984 and in 1992 the Department of Fish and Game designated the area in which the five sites are located as Former Wetlands/Agricultural Fields and not feasibly restorable. The five archaeological sites are outside of any mapped wetland areas as delineated by the Commission in consultation with the Department of Fish and Game in previous permit and LCP action. Section 13577 (b) (1) of the Commission's regulations implement the Coastal Act definition of wetlands as follows:

Measure 100 feet landward from the upland limit of the wetland. Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turgidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats. For purposes of this section, the upland limit of a wetland shall be defined as:

- (A) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover,
- (B) the boundary between soil that is predominately hydric and soil that is predominantly nonhydric; or
- (C) in the case of wetland without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal precipitation, and land that is not.

To ensure that all proposed development activity is outside of any designated wetlands and that the proposed development will not adversely impact any nearby wetlands, a special condition is necessary requiring the applicant to map where construction, staging activities, and storage of equipment will be located and demonstrate that such activities will remain outside any area that meet any one of the criteria for wetlands established by the Commission. The Commission finds that only as conditioned will the proposed project be consistent with Sections 30230, 30231, 30233, and 30240 of the Coastal Act.

D. Cultural Resources

Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Both the Coastal Act and the City's certified Land Use Plan require mitigation measures for development areas, which contain significant cultural resources. The proposed project is intended to provide such mitigation measures. The Commission adopted Statewide Guidelines which provide guidance for preferable mitigation measures. These measures range from complete avoidance of the site to a full scale excavation and analysis of the archaeological materials.

The Guidelines recommend a three step process to develop an appropriate archaeological mitigation program. The first step includes archaeological reconnaissance, which typically is designed to locate archaeological sites based on a literature review/archival search and possibly a surface reconnaissance. This step has been completed for all the subject archaeological sites.

The second step includes testing and determination of significance. This is the step that the applicant is requesting under this permit. This step includes defining the boundaries of the site, and evaluation of its composition and significance. This step would likely include some subsurface testing. A site's significance is determined on the basis of site integrity, research potential, ethic and historical value and the potential for public appreciation. The third step requires the preparation of a Mitigation Plan, taking into consideration the information obtained in steps one and two.

The Commission's Statewide Interpretive Guidelines also provide guidance for archaeological excavations. Included in the guidelines is the requirement that such work be conducted by a qualified professional. Members of the Society of Professional Archaeologists (SOPA) are considered to meet these qualifications. The proposed project will be led by Mr. Jeffrey H. Altschul, a member of the Society of Professional Archaeologists.

The Guidelines also recommend that archaeological work involving excavation of more than two meters of surface area provide a written research design. The research design should be an explicit statement of research objectives and a program for carrying out these objectives. The proposed research design contains specific theoretical problems, working hypotheses and a statement of the data required to confirm or reject the hypotheses. The proposed Research Design also includes detailed field and laboratory methods.

The proposed Research Design conforms with the Programmatic Agreement among the Corps of Engineers, the Advisory Council on Historic Preservation, and the State Office of Historic Preservation. In addition, the Programmatic Agreement has been reviewed and signed by Vera Rocha, Tribal Chairman of the Coastal Gabrielinos, Manuel Rocha, spiritual leader, and Cindi Alvitre, Chairperson Tribal Council.

To assure that the proposed project remains sensitive to the concerns of the affected Native American groups, a Native American monitor should be present at the site during all excavation activities to monitor the work. The monitor should meet the qualifications set forth in the NAHC's guidelines. As a condition of approval, an on-site Native American monitor that meets the qualifications of the NAHC's guidelines, shall be required during excavation activities. Therefore, as conditioned, the proposed project is consistent with Section 30244 of the Coastal Act which requires reasonable mitigation measures be provided to offset impacts to archaeological resources. According to the project's archaeologist once a site is determined to contain significant cultural resources a Treatment Plan (Mitigation Plan) will be prepared and reviewed by the appropriate Federal and State reviewing agencies. The Treatment Plan will outline actions to be implemented to mitigate impacts to the cultural resources found at the site(s). To determine whether the Treatment Plan is consistent with the proposed permit or if an amendment to this permit is required, the applicant shall submit a copy of the Treatment Plan to the Commission. The Executive Director, after review of the Treatment Plan, will determine if an amendment will be required. The Executive Director will require an amendment if there is significant additional excavation required or there is a significant change in area of disturbance or change in the type of excavation procedures.

In the event that grave goods are discovered, the Research Design provides that upon the discovery of human remains, the Los Angeles County Coronor's Office will be notified in compliance with state law, and they in turn will request the Native American Heritage Commission to determine the cultural affiliation.

The Commission's Archaeological Guidelines also recommend that the research design include arrangements for curation of collections when appropriate, and dissemination of the research

findings. Regarding curation, the proposed Research Design states that all project related notes, records, photographs, and sorted materials (except those repatriated under California State Burial Law) will be curated at a repository meeting federal standards and in accordance with 36 CFR 79.

The applicant's archaeologist has indicated that at this exploratory phase of the archaeological investigation it is too early to confirm a repository due to the extensive amount of work and analysis that needs to be done prior to curating any discovered artifacts. The applicant's archaeologist has indicated that at this time the most likely repository would be the San Bernadino County Museum. The San Bernadino County Museum meets Federal and State guidelines for curation of archaeological collections.

There must be some assurance that the collection and related field records, catalogs and reports will be properly curated. Without proper curation there is no assurance that the value of information obtained will be retained in perpetuity. A qualified curation facility is one that meets the State Historic Preservation Office (SHPO) guidelines, such as the mentioned San Bernadino County Museum. However, there is no guarantee that the facility will be able to accept the collections once the artifacts are ready for curation. Consequently, if another facility is available that meets SHPO's guidelines, it would also be appropriate to allow curation to occur there. In any case, curation of any significant artifacts must be assured in order to find that the proposed project meets Section 30244 of the Coastal Act's requirement for reasonable mitigation. Therefore, as a condition of approval, artifacts of significant cultural value collected as a result of this project at the archaeological sites shall be curated at a qualified curation facility. If no qualified curation facility is available at the time the project is complete, an amendment to this permit shall be required to determine the appropriate curation process.

The Commission finds, therefore, that as conditioned, the proposed project is consistent with Section 30244 of the Coastal Act. The Commission notes that any additional work not described under this permit shall require review by the Executive Director to determine if an amendment or a new permit would be required.

D. Local Coastal Program

- (a) Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3.

On November 26, 1986, the Commission certified, with suggested modifications, the land use plan portion of the City of Los Angeles, Playa Vista segment, Local Coastal Program. In 1991, the Commission approved a permit for the 26.1 acre freshwater marsh restoration project. As stated in

the previous sections of this report all five archaeological sites are outside of any jurisdictional wetlands and outside of the approved freshwater marsh restoration area.

The certified LUP contains policies to guide the types, locations and intensity of future development in the Playa Vista area. Among these policies are those specified in the preceding section regarding wetlands and cultural resources. The proposed development is consistent with the policies of the certified LUP. As proposed the project will not adversely impact coastal resources or access. The Commission, therefore, finds that the proposed project will be consistent with the Chapter 3 policies of the Coastal Act and will not prejudice the ability of the City to prepare a Local Coastal Program implementation program consistent with the policies of Chapter 3 of the Coastal Act as required by Section 30604(a).

E. CEQA

Section 13096 of the Commission's administrative regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effects, which the activity may have on the environment.

As conditioned, there are no feasible alternatives or mitigation measures available, which would substantially lessen any significant adverse impact, which the activity may have on the environment. Therefore, as approved, the project is consistent with CEQA and the policies of the Coastal Act to conform to CEQA.